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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/721,871	11/24/2000	Kenneth B. Higgins	5113	4059

7590 06/13/2003  
Terry T. Moyer  
P.O. Box 1927  
Spartanburg, SC 29304

EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/13/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/721,871

Applicant(s)

HIGGINS ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-51, 57-85, 123-126, 128-130, 132, 133, 136-142 and 145-149 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-51, 57-85, 123-126, 128-130, 132, 133, 136-142 and 145-149 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## **DETAILED ACTION**

### ***Response to Amendment***

1. Amendment C, submitted as Paper No. 16 on April 8, 2003, has been entered. Claims 1 and 41 have been amended as requested, while claims 52-56, 86-122, 127, 131, 134, 135, 143, and 144 have been cancelled. It is noted that in the Remarks section of said amendment, applicant asserts claims 86-116 and 119-122 are cancelled (i.e., claims 117 and 118 are not cancelled). However, the actual amendment cancels claims 117 and 118. Thus, the pending claims are 1-51, 57-85, 123-126, 128-130, 132, 133, 136-142 and 145-149.

2. Amendment C is sufficient to withdraw the 112, 2<sup>nd</sup> rejection set forth in sections 3-5 of the last Office Action.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 2, 4-7, 14, 16-35, 38-50, 56-60, 62-67, 69-73, 75-80, 123-126, 128-130, 132, 133, 136-142, and 145-149 stand rejected under 35 USC 103(a) as being unpatentable over US 4,552,857 issued to Higgins in view of 5,610,207 issued to DeSimone et al., as set forth in section 7 of the last Office Action.

5. Claims 3, 8, and 15 stand rejected under 35 USC 103(a) as being unpatentable over the cited Higgins and DeSimone patents as set forth above, and in further view of EP 048 986 issued to Dow, as set forth in section 8 of the last Office Action.

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6. Claims 36, 37, 51, and 81-85 stand rejected under 35 USC 103(a) as being unpatentable over the cited Higgins and DeSimone patents as set forth above, and in further view of US 5,540,968 issued to Higgins, as set forth in section 9 of the last Office Action.

7. Claims 9-13, 61-68, and 74 stand rejected under 35 USC 103(a) as being unpatentable over the cited Higgins and DeSimone patents as set forth above, and in further view of US 5,616,200 issued to Hamilton, as set forth in section 10 of the last Office Action.

### ***Response to Arguments***

8. Applicant's arguments filed with Amendment C have been fully considered but they are not persuasive. Applicant traverses the above art rejections by asserting the examiner employed improper hindsight (Amendment C, page 21, 1<sup>st</sup> paragraph and page 22, 2<sup>nd</sup> paragraph). In response, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the instant case, the rejections are based upon knowledge gleaned only from the prior art, rather than applicant's disclosure.

9. Additionally, applicant traverses on the grounds that DeSimone is non-analogous art (Amendment C, page 22, 1<sup>st</sup> paragraph). In response, it is noted that DeSimone explicitly states "carpet backing" and not carpet padding or underlay (col. 2, lines 40-45). It is well known in the art that carpet backings are layers which are directly attached to the backside of a carpet fabric,

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while carpet padding or underlay is a separate material which is laid on a subfloor beneath the carpet in order to provide cushioning. Hence, one skilled in the art would readily recognize that one of the outer laminate layers, which forms DeSimone's core of rebond foam, may be a carpet fabric. Thus, applicant's arguments are found unpersuasive and the above prior art rejections are maintained.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


11. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JASKA  
PRIMARY EXAMINER